IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 1696 of 2016

Pr. Commissioner of Income-tax-16 ..Appellant.

Vs

Wadia Ghandy & Co. ..Respondent.

Mr. Suresh Kumar for the Appellant.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 12TH FEBRUARY, 2019.

P.C. :

1 This appeal is filed by the Revenue challenging judgment of Income-tax Appellate Tribunal (for short "Tribunal"). The appellant Revenue urges following question of law for our consideration:-

> "Whether on the facts and the circumstances of the case and in law, the ITAT was justified in allowing the deduction on account of payments made to the retired partners as admissible expenditure under the provisions of the partnership deed?"

2. The respondent assessee is a Partnership Firm engaged in providing legal services. During the course of

scrutiny of the assessed return for the assessment year 2007-2008, the Assessing Officer objected to the claimant for deduction of a sum of Rs. 3.68 Crores which was paid by the assessee firm to its retired partner. The assessee pointed out that the payment was made in terms of clause 23.5 contained in partnership agreement. By further elaborating the stand before the Assessing Officer, the assessee pointed out that the amount was paid by way of compensation to the outgoing partner towards the appreciation in the value of the immovable properties held by the assessee firm to the extent of his share of the partnership and also for the work done during the period of partnership, which was in progress on account of the fact that the work had not been completed and therefore the clients could be charged for the same. The assessee pointed out that in the partnership agreement itself there was formula to compensate the outgoing partner for his share of those profits of the firm in relation to the period during which he was a partner and which profits had not been realized by the firm on account of non-completion of the work during the tenure of the partner. The assessee firm further pointed out that it would be paying taxes on the entire fees received by it in the year in which the bills would be raised. This was also including capital gains on the sale of the immovable properties, without claiming any depreciation in those years in respect of which payments to the outgoing partner were made.

3. The assessing officer did not accept the stand and disallowed the expenditure. The assessee carried the matter in appeal. Tribunal by impugned judgment referred to and relied upon the earlier decisions on the point to accept the assessee's stand. It appears that the assessee had taken both the grounds namely, that the expenditure was made to discharge the obligation undertaken by the firm as per the relevant clause of the partnership agreement and further that essentially this was a case of diversion of income at source.

4. We notice that similar questions have been considered by this Court on numerous occasions. In case of Commissioner of Income-tax v. Mulla and Mulla and Craigie, Blunt and Caroe reported in 190 ITR 198 the concept of diversion of income at source by overriding title was discussed at length under somewhat similar circumstances. The Court made the following observations:-

"In the present case, the assessee-firm was under a legal obligation in terms of the deed of partnership dated September, 1, 1967, and the clauses in the two subsequent partnership deeds to pay out standing fees for the work done up to and during the period when the deceased partners were partners. This was also an instance of the source of income being subject to an obligation. We are in agreement with the Calcutta decision and hold that the amounts so paid by the assessee-firm to the heirs of the deceased partners cannot be assessed as the income of the firm."

5. The decision in the case of Mulla and Mulla and Craigie, Blunt and Caroe (supra) was followed by this Court in Income Tax Appeal No.2277 of 2013 in the case of Commissioner of Income Tax-11, Mumbai v. M/s Kanga & Co. (ITXA 2277/2013) decided on 1st February, 2016. The Court observed as under:-

3. "The only issue in this appeal is the exclusion from the income of the firm, the amounts relatable to the retired/deceased partner/s share by diversion on account of overriding title in favour of the ex-partner/s or their heirs/executors by virtue of the partnership deed.

4. We find that the impugned order of the Tribunal has dismissed the Revenue's appeal by inter alia recording the fact that in the order of the Commissioner of Income Tax (Appeals) (CIT A)) had only followed the consistent view of the Tribunal in the assessee's own case for the earlier Assessment years. In fact, the impugned order of the Tribunal has further placed reliance upon the decision of this Court in Income Tax

Appeal No.860 of 2009 dated 19/6/2009 rendered in the respondents-assessee's own case as well as decision of this Court in the case of CIT vs. Mulla and Mulla and Craigie, Blunt and Caroe, (1991) 190 ITR 198 while dismissing the Revenue's appeal.

5. In view of impugned order of the Tribunal merely following the orders of this Court, we are of the view that the appeal does not raise any substantial question of law."

6. It is not necessary to refer to long line of decisions of this Court and other High Courts taking a similar view in the similar circumstances. Only to summarize, undisputed facts are that the partnership firm envisaged payment to a outgoing partner on the basis that the partner would have rendered service during his tenure as a partner of the firm but could not enjoy the fruits thereof on account of the fact that the work having remained incomplete, the concerned client had not been billed for the work already done. In similar circumstances, the courts have held that payment to the partner would amount to diversion of income at source by overriding title. No substantial question of law arises for our consideration. The income tax appeal is dismissed.

(B.P. COLABAWALLA, J.) **(AKIL KURESHI, J)**